

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL SESSION, 1995

<p>FILED</p> <p>September 22, 1995</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

STATE OF TENNESSEE,)	
)	
Appellee,)	No. 01C01-9409-PB-00318
)	
)	Davidson County
v.)	
)	Hon. James R. Everett, Jr., Judge
)	
WALTER E. HULSEY,)	(Driving Under the Influence of an Intoxicant)
)	
Appellant.)	

For the Appellant:

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 (AT TRIAL)

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 (AT TRIAL & ON APPEAL)

For the Appellee:

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 and
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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, Walter E. Hulsey, was convicted in the Probate Court of Davidson County, acting as the Criminal Court, for driving while under the influence of an intoxicant (DUI), second offense. He was sentenced to eleven months, twenty-nine days in jail, with all but sixty days suspended, and fined \$1,000. The defendant appeals as of right and, in essence, contends that the evidence was insufficient to prove that he was driving under the influence.

The evidence consists of the testimony of Metro Police Officer Tom Jones, the defendant, Tracy Patton and Bob Evans. Officer Jones was investigating a car that struck a power pole and learned that it belonged to the defendant. The defendant was found about one-half mile from the scene, sitting in the parking lot of a Burger King. The defendant admitted being the driver. Officer Jones testified that the defendant was unsteady on his feet, smelled of alcohol, had bloodshot eyes, and had slurred speech. He stated that the defendant failed field sobriety tests and refused to take a breath alcohol test. The defendant admitted having a couple of drinks at his work as the manager of an O'Charley's restaurant, but then denied having done so. Officer Jones said that he believed that the defendant was under the influence of an intoxicant.

Ms. Patton testified that she was an employee at O'Charley's and had been tending bar on the night in question. She said that it was a busy night and that the defendant had helped at the bar. She testified that she never saw the defendant drinking that night and that he was fine when he left work. Also, she said that the defendant called her that night and seemed sober. Mr. Evans testified that he worked at Burger King and recalled seeing the defendant ordering food on the night in

question. The defendant's arm was bleeding. He said the defendant did not seem intoxicated and that he recalled the defendant asking him where he could buy some beer.

The defendant testified that he worked ten hours that day and that it was a busy night. He denied drinking on the job. He said that the wreck happened when he swerved to avoid hitting a car. He tried calling people on his cellular telephone, but could not get any reception. He said that he walked to the Burger King, ordered food, and asked about a place to buy beer. He stated that he called Ms. Patton to let her know what happened, then went to buy a quart of beer. The defendant testified that he made telephone calls and drank a quart of beer before the officer arrived. He did not recall telling an officer that he had any drinks while at work.

In contending that the evidence is insufficient, the defendant makes much of the fact that the police did not see him drive and the fact that his witnesses testified as to his sobriety both before and after his driving. However, to accredit his contentions would require us to ignore the standard by which we must review the evidence when determining its sufficiency. That standard is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979).

Officer Jones' testimony about his observations of the defendant and about the defendant's admissions to him relative to driving and drinking fully support a conclusion beyond a reasonable doubt, when taken as true, that the defendant had

been driving while under the influence of an intoxicant. The judgment of conviction is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Paul G. Summers, Judge

William M. Barker, Judge